

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ERIC A. ELLIOTT (p/k/a FLY HAVANA),

Plaintiff,

- against -

JOSEPH ANTHONY CARTAGENA (p/k/a FAT
JOE), et al.,

Defendants.

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NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

ORDER

19 Civ. 1998 (NRB)

WHEREAS the Court on July 31, 2020 issued a Memorandum & Order (the "July 31 Order") denying defendants' motion for summary judgment and holding that defendants failed to meet the requirements under Federal Rule of Evidence 1004(a) to establish that a signed copy of an agreement between the parties (the "Agreement") was lost or destroyed so that defendants may proffer an unsigned copy of the Agreement to establish the content of the Agreement; and

WHEREAS the Court further held that in order to establish that the signed copy of the Agreement was lost or destroyed, defendants should exhaust all efforts to obtain from non-party Elis Pacheco ("Pacheco") any information he might have on the whereabouts of the signed copy of the Agreement; and

WHEREAS the Court further held that summary judgment was denied without prejudice to renew the motion once defendants had

exhausted all efforts to obtain sworn testimony from Pacheco; and

WHEREAS since the Court issued the July 31 Order, defendants have submitted four letters, ECF Nos. 169, 173, 175, 181, and a motion for alternative service, ECF No. 177, detailing their nineteen unsuccessful attempts to serve Pacheco with subpoenas to obtain information he might have on the whereabouts of the signed copy of the Agreement; and

WHEREAS the Court is now satisfied that defendants have exhausted all efforts to obtain sworn testimony from Pacheco and may invoke Rule 1004(a) and (b) to establish the content of the Agreement; it is hereby

ORDERED that defendants are granted leave to renew their motion for summary judgment. Plaintiff will have fourteen (14) days to file a response as provided for in the July 31 Order.

DATED: New York, New York
March 30, 2021

A handwritten signature in blue ink, reading "Naomi Reice Buchwald", is positioned above a horizontal line.

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE